No. 83-372

IN THE

Supreme Court of the United States

October Term, 1983

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

UNITED STATES POSTAL SERVICE,
Appellee.

On Appeal From the United States Court of Appeals for the Ninth Circuit.

BRIEF OF AMICI CURIAE, STATES OF DELAWARE, MARYLAND, MINNESOTA, OREGON and PENNSYLVANIA IN SUPPORT OF APPELLANT.

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BRIEF OF AMICI CURIAE, STATES OF DELAWARE, MARYLAND, MINNESOTA, OREGON and PENNSYLVANIA IN SUPPORT OF APPELLANT.

Statement of Interest.

The United States Postal Service challenges the right of the State of California to use its statutory tax garnishment remedies in the collection of its lawful revenue. The U.S. Postal Service contends that it is immune from the State's tax levy because it is required only to withhold current state taxes from the wages of its employees.

The *Amici* are vitally concerned with the ability of the states to administer their taxes in a reasonable and even-handed manner within the framework of our federal system. It is believed that this objective has been frustrated by the Ninth Circuit's decision below. The circuit court construed a federal statute to prohibit states from levying upon the wages of Postal Service employees even though no federal

legislation requires this result.

The *Amici* believe the Ninth Circuit erred in its decision. Statutory tax levies and or statutory judgments are appropriate vehicles for each state to utilize in order to secure payment of delinquent tax debts from employees of the U.S. Postal Service. The interest of the *Amici* in this appeal therefore parallels that of the appellant, the Franchise Tax Board.

Summary of Argument.

The sovereign immunity of the U.S. Postal Service was waived unequivocally with the passage of the Postal Reorganization Act of 1970 (Act of Aug. 12, 1970, Pub. L. No. 91-375, 84 Stat. 719, codified at 39 U.S.C. §§ 101 *et seq.*). Such waiver should not be disturbed by reliance upon an unrelated federal statute (5 U.S.C. § 5517) in contravention of the federal policy of cooperation with the various states in the collection of their revenue.

ARGUMENT.

I.

The U.S. Postal Service Is Not Immune From State Tax Collection Levies.

In the Postal Reorganization Act, Congress waived Postal Service immunity, without qualification or limitation, by providing that the Service can "sue or be sued" like a private employer. 39 U.S.C. section 401. See *FHA v. Burr*, 309 U.S. 242, 245, 60 S.Ct. 488, 490 (1940). Section 401 has consistently been held by federal courts as a waiver of Postal Service immunity from state garnishment proceedings. *Assoc. Financial Services of America v. Robinson*, 582 F.2d 1 (5th Cir. 1978) (per curiam); *Beneficial Finance Co. of New York, Inc. v. Dallas*, 571 F.2d 125 (2d Cir. 1978); *General Elec. Credit Corp. v. Smith*, 565 F.2d 291 (4th Cir. 1977) (per curiam); *Goodman's Furniture v. United States Postal Service*, 561 F.2d 462 (3d Cir. 1977) (per curiam); *May Dept. Stores Co. v. Williamson*, 549 F.2d 1147 (8th Cir. 1977); *Standard Oil Div., American Oil Co. v. Starks*, 528 F.2d 201 (7th Cir. 1975) (per curiam). *Cf. Snapp v. U.S. Postal Service-Texarkana, etc.*, 664 F.2d 1329 (5th Cir. 1982) (rejecting attempt by Postal Service employee to enjoin wage garnishment).

Even the majority of the Ninth Circuit in the consolidated companion case below, found waiver of Postal Service immunity when it said: "The Postal Service does not contend that it is immune from all suits, for § 401(1) of the Postal Reorganization Act clearly and unambiguously waives sovereign immunity by providing that the Service 'may sue or be sued.' " *Employment Development Department v. U.S. Postal Service*, 698 F.2d 1029, 1032 (9th Cir. 1983).

In conjunction with the waiver of its immunity, the U.S. Postal Service should recognize that each state has a vital

interest in collecting taxes from its taxpayers, "[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." *Bull v. United States* (1935) 295 U.S. 247, 261 (1935); Accord *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 350 (1977). A state's levy for taxes is simply a means by which each state secures to itself "the lifeblood of government." To restrict such lifeblood should not be tolerated in the absence of specific unequivocal legislation by Congress — which is clearly absent in this case. Any infringement upon a state's power to collect its lawful revenue goes against established federal policy and must be closely scrutinized in order that the *State's* sovereign power to tax is respected.

As the intent of the Postal Reorganization Act was to remove sovereign immunity from the U.S. Postal Service, it should be treated like any private business corporation for civil purposes. Such a principle is clear in the statutes and supported by the numerous cases cited in appellant's brief as the majority rule.

II.

The Ninth Circuit's Application of 5 U.S.C. Section 5517 Was Erroneous.

The Ninth Circuit below "excused" the Postal Service from honoring the appellant's statutory levy for taxes. Its decision was based upon 5 U.S.C. section 5517[1] and the

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[1]5 U.S.C. § 5517 provides in pertinent part:

"(a) When a State statute—

(1) provides for the collection of a tax either by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State, or by granting to employers generally the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld; and

(2) imposes the duty or grants the authority to withhold generally with respect to the pay of employees who are residents of the State;

agreement between state and federal authorities which implemented section 5517 (31 C.F.R. 215.12). The court determined that the Postal Service was immune from appellant's tax garnishments because its duty to the State was limited solely to the withholding of current taxes from the wages of its employees.

Such determination was erroneous. By the enactment of 5 U.S.C. section 5517, Congress simply provided for a state income tax prepayment plan, to wit; the withholding of certain amounts which may or may not be due as a tax from a federal employee at the conclusion of that employee's current tax year.

The language of section 5517 and its legislative history demonstrate that the statute was intended to be and, in fact, is limited to the withholding of current anticipatory tax liabilities. The House of Representatives Committee on Ways and Means noted that:

> It is the view of your committee that every practical step should be taken to *cooperate in the area of withholding with the State and Territorial governments* in view of their cooperation with the Federal Government in fiscal matters generally . . . the Treasury Department indicated that it strongly supports Federal co-

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the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made.

"(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section.

"(c) . . ."

> operation with States which utilize employer withholding of taxes in the administration of their income tax as a logical development in Federal-State fiscal cooperation. (Emphasis added.)

2 U.S. Code Cong. & Adm. News, p. 2434 (1952).

By its own terms and as supported by its legislative history, 5 U.S.C. section 5517 is a limited waiver of sovereign immunity, applicable to *all* federal agencies. It has one purpose: to let each state utilize a prepayment scheme for the remittance of anticipatory state taxes of federal employees. It neither prohibits nor permits wage garnishment of delinquent tax liabilities. It is *not* a congressional limitation on the complete waiver of sovereign immunity of the U.S. Postal Service, as determined by 39 U.S.C. section 401(1).

Accordingly, the Postal Service should recognize the laws of the state in which it operates. As with any employer, if the withholding of current taxes is required, it should so withhold. Contemporaneously, if state law requires an employer to transmit a delinquent debtor-employee's property to the taxing authority, the Postal Service should also honor such requirement.

In this manner, 5 U.S.C. section 5517 and 39 U.S.C. section 401 can be interpreted harmoniously. The former is a limited waiver of sovereign immunity by *all* federal agencies for the specific purpose of effectuating the current withholding of state income taxes. The latter is the complete waiver of immunity of the Postal Service, making it amenable to the tax garnishment laws of the various states.

III.

The U.S. Postal Service Should Cooperate With the Various States in the Collection of Their Revenues.

It is the long established policy of the Federal Government that its employees have an ethical responsibility to pay their state taxes. *Non-resident Taxpayers Assn. v. Municipality*

of Philadelphia, 478 F.2d 456, 459 (3d Cir. 1973). By its arguments herein, the U.S. Postal Service would use 5 U.S.C. section 5517 to shield their employee-debtors from the collection of legitimate state tax liabilities. Such action contravenes the intent of section 5517 which was to further the Federal Government's policy of "cooperat(ing) with the States in the administration of their tax laws to the fullest extent practicable." 2 U.S. Code Cong. and Adm. News, p. 2360 (1952).

With its employees residing in all fifty states, the Postal Service, as a matter of public policy, should recognize its duty of cooperating with the various states. It should not participate in an anomalous situation whereby a statute (5 U.S.C. § 5517), passed for purposes of cooperative tax collection, is misapplied to the hindrance of such cooperation.

The states are not seeking to impose a tax on the Postal Service. Rather, all that is being sought is recognition from the Postal Service of the legitimacy of the various states' summary administrative proceedings to collect taxes—procedures which have consistently been upheld by the United States Supreme Court (see *Bull v. United States*, 295 U.S. 247 (1935); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977)).

The Postal Service, just like any other employer, must respect the propriety and priority of state tax levies. It should not be allowed to inhibit the revenue collection of the various states when such is contrary to federal law and policy.

Conclusion.

The exceptional importance of the collection of state taxes is a matter which cannot be debated. In the absence of a federal statute which explicitly prohibits garnishment of wages of Postal employees for state tax debts, this vital means of collection of these liabilities must be preserved

not only for appellant but also for every state in which Postal employees reside.

For the reasons as heretofore set forth and for the reasons stated in California's Brief, it is respectfully requested that this Court reverse the decision of the Ninth Circuit.

Respectfully submitted,

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